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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,910	10/04/2004	Marc Chassillan	28971.0124	4260

7590 04/25/2006

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EXAMINER

JOHNSON, STEPHEN

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 04/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/509,910	Applicant(s) CHASSILLAN, MARC	
	Examiner Stephen M. Johnson	Art Unit 3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 11, line 6, it is not understood as to how the reception structure is “placed in a horizontal direction”. It could be either [placed in a horizontal orientation] or [moved in a horizontal direction].

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3 and 7-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Sprafke (880).

Sprafke (880) discloses a roof protection device comprising:

- | | |
|----------------------------|---------------------|
| a) a support; | 18 |
| b) a reception structure; | 17 or 16a |
| c) a protection means; | 16 |
| d) a vehicle roof; | 1, 5 |
| e) an active position; and | see figs. 6 or 7 |
| f) a passive position. | col. 3, lines 35-46 |

4. Applicant’s arguments are addressed as follows. It is argued that the claimed feature “rotatably mounted in a horizontal direction” or “horizontal placement” are not met by Sprafke.

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In response, please note figs. 6 and 7 and col. 3, lines 35-46 of Sprafke. In also argued that the intent of Sprafke is a rotatable hatch cover to permit viewing and notes viewing devices 3 and the rotation of plate 1. In response, this is not the feature or embodiment being relied upon to meet these claim limitations. Note that 16a or 17 is being relied upon as the reception structure and that 16 is being relied upon as the protection means. Also see col. 3, lines 35-46. It should be noted that the hatch cover must inherently perform the function of active protection when located above the hatch opening 2 and be inherently located in a passive position when rotated away from the hatch opening 2. Just because the hatch cover is rotated to permit egress in and out of the hatch opening does not prohibit the hatch cover from inherently providing its protective function.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sprafke (880) in view of Adlam et al. (162).

Sprafke (880) applies as previously recited. However, undisclosed is a motor means with associated power source to vary the position of the protective roof device. Adlam et al. teach a motor means with associated power source to vary the position of the protective roof device (see col. 6, lines 17-24 of Adlam et al.). Applicant is selecting and substituting one means for rotating a protective roof device for another in an analogous art setting as explicitly encouraged by the primary reference (see figs. 4 and 5 of Sprafke). It would have been obvious to a person of

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ordinary skill in this art at the time of the invention to apply the teachings of Adlam et al. to the Sprafke roof protection device and have a roof protection device with a motor means and associated power supply to vary the position of the protective roof device.

7. Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Kazanjian (079).

Kazanjian (079) discloses a roof protection device comprising:

- | | |
|-------------------------------------------------|-----------------------------|
| a) a support; | 14 |
| b) a reception structure; | 21, 28 |
| c) a protection means; | 27 |
| d) a vehicle roof; | see fig. 1 |
| e) an active position; | when wheel 21 is rotating |
| f) a passive position; | when wheel 21 is stationary |
| g) motor means and associated power source; and | 35 |
| h) a access hatches. | inherent to protected ship |

8. Applicant's arguments filed on 2/7/2006 have been fully considered but they are not persuasive. These arguments have been addressed in paragraph 4 above.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877 and whose e-mail address is (Stephen.Johnson@uspto.gov). The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.



STEPHEN M. JOHNSON
PRIMARY EXAMINER

Stephen M. Johnson
Primary Examiner
Art Unit 3641

SMJ
April 23, 2006